

DOW, LOHNES & ALBERTSON, PLLC  
ATTORNEYS AT LAW

ORIGINAL

PETER A. BATACAN  
DIRECT DIAL 202-776-2773  
pbatacan@dlalaw.com

WASHINGTON, D.C.  
1200 NEW HAMPSHIRE AVENUE, N.W. • SUITE 800 • WASHINGTON, D.C. 20036-6802  
TELEPHONE 202-776-2000 • FACSIMILE 202-776-2222

ONE RAVINIA DRIVE • SUITE 1600  
ATLANTA, GEORGIA 30346-2108  
TELEPHONE 770-901-8800  
FACSIMILE 770-901-8874

EX PARTE OR LATE FILED

October 16, 1996

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554  
STOP CODE: 1170

DOCKET FILE COPY ORIGINAL

RECEIVED

OCT 16 1996

Federal Communications Commission  
Office of Secretary

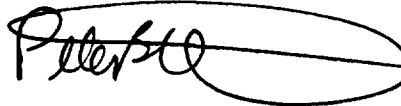
Re: Ex Parte Communication in PR Docket No. 93-61

Dear Mr. Caton:

Pursuant to Section 1.1206(a) of the Commission's Rules, notice is hereby given of an *ex parte* communication regarding the above-referenced proceeding. An original and two copies of this notice are being filed with the Secretary's office. On the afternoon of October 15, 1996, Steven D. Scheiwe of Teletrac, Inc. and Leonard J. Kennedy, John S. Logan and Peter A. Batacan on behalf of Teletrac, Inc., met with Jackie Chorney, Senior Legal Advisor to Chairman Reed E. Hundt and Suzanne Toller, Legal Advisor to Commissioner Rachelle B. Chong. Due to the lateness of the hour, this notice is being filed on the next business day.

The presentation centered on service area and auction issues related to the multilateration location and monitoring service ("LMS") and grandfathered licensees. In addition, issues related to Teletrac's pending petition for reconsideration filed in the above-captioned proceeding (a copy of which is attached hereto) were discussed. Please do not hesitate to contact the undersigned if you have any questions regarding this matter.

Sincerely,



Peter A. Batacan

encl.

cc: Jackie Chorney, Esq. (w/encl.)  
Suzanne Toller, Esq. (w/encl.)

No. of Copies rec'd  
List ABCDE

*Dez*

## STAMP & RETURN

PR Docket No. 93-61

RECEIVED

MAY 30 1946

## PETITION FOR RECONSIDERATION

OFFICE OF SECRETARY

**Werner K. Hartenberger**  
**John S. Logan**  
**Peter A. Batacan**

**DOW, LOHNES & ALBERTSON**  
A Professional Limited Liability Company  
1200 New Hampshire Avenue, N.W.  
Suite 800  
Washington, D.C. 200036-6802  
(202) 776-2000

**May 30, 1996**

## SUMMARY

Teletrac License, Inc. ("Teletrac"), by its attorneys, hereby submits its petition for reconsideration of the two-kilometer site relocation rule applicable to its grandfathered multilateration location and monitoring service ("LMS") system and the "safe harbor" provisions applicable to Part 15 unlicensed operations. Teletrac is the only grandfathered multilateration LMS licensee with a constructed and operational system in several major U.S. cities. Teletrac currently is in the process of building out its system to meet the Commission's September 1, 1996, construction deadline, and reconsideration of the two-kilometer site relocation rule is vital to enable Teletrac to produce the full public interest benefits of its state-of-the-art LMS system. Reconsideration of the two-kilometer site relocation rule is necessary because preservation of the current rule would hinder the ability of grandfathered LMS licensees to provide vital location and tracking services to consumers and public safety and law enforcement officials.

The two-kilometer site relocation rule provides that a grandfathered multilateration LMS licensee cannot relocate to an alternate site more than two kilometers from its originally licensed site. The purpose of this rule is to preserve auctionable spectrum beyond the two-kilometer cutoff for the Commission's anticipated future competitive bidding procedures for market-based LMS spectrum licenses. The Commission can fully achieve that goal without impeding the build-out and operation of LMS systems merely by requiring a demonstration that the alternate sites do not expand the geographic coverage of the LMS system.

Allowing Teletrac to move to alternate sites more than two kilometers from its originally licensed sites is in the public interest. Permitting Teletrac to position its service at alternate sites more than two kilometers away from originally licensed sites will enable

Teletrac to expand the overall efficiency and reliability of its location and monitoring system. Such enhancements will benefit private consumers and public safety and law enforcement agencies by facilitating the deployment of a state-of-the-art, seamless wireless tracking and monitoring network critical to a number of public interest goals, such as managing industrial fleets and inventory, combating automobile theft and permitting law enforcement officials to collect radiolocation intelligence and information in fighting crime in several of the nation's largest urban environments. Absent reconsideration of the two-kilometer rule, grandfathered multilateration LMS licensees will not be able to maximize the spectral efficiencies of their systems for the benefit of consumers.

Furthermore, the Commission must reconsider application of the two-kilometer rule to incorporate the exceptions proposed by Teletrac because the Commission's conclusion that the same two-kilometer benchmark should apply to 931 MHz CMRS paging and grandfathered multilateration LMS licensees was in error. 931 MHz CMRS paging operations are distinguishable from grandfathered multilateration LMS operations, and application of the same two-kilometer benchmark to the latter is therefore unjustified.

In addition, the Commission must clarify the impact of its "safe harbor" rule on Part 15 unlicensed operations. Under the "safe harbor" rule established in the instant docket, the Commission provided that Part 15 operations are presumed not to cause interference to multilateration LMS licenses provided that these operations meet certain propagation characteristics set forth in Part 15 of the Rules. In *Amendment of Parts 2 and 15 of the Commission's Rules Regarding Spread Spectrum Transmitters*, Notice of Proposed Rulemaking, ET Docket No. 96-8, RM-8435, RM-8608, RM 8609, FCC 96-36 (released

February 5, 1996) ("*Spread Spectrum Notice*"), however, the Commission recently tentatively proposed to amend its Part 15 rules governing the operations of spread spectrum "frequency hopping" devices. To the extent that the pending rulemaking may change the Part 15 rules under which spread spectrum frequency hopping devices are authorized to operate, the Commission must clarify that Part 15 operations will be presumed not to cause interference to multilateration LMS licensees and fall within the "safe harbor" rule only if such operations are consistent with the parameters of the Part 15 rules that existed when the safe harbor rule was adopted.

Accordingly, Teletrac urges the Commission to grant the relief it requests on reconsideration. Limited modification and clarification of the two-kilometer site relocation and safe harbor rules as requested herein will facilitate the efficient development of Teletrac's location and monitoring system, promote the Commission's public safety and spectrum management goals and produce important benefits for wireless consumers.

## TABLE OF CONTENTS

<b>SUMMARY</b>	<b>i</b>
<b>I. INTRODUCTION</b>	<b>1</b>
<b>II. THE COMMISSION SHOULD RECONSIDER THE TWO-KILOMETER RULE TO PERMIT THE EFFICIENT DEVELOPMENT OF GRANDFATHERED LMS OPERATIONS.</b>	<b>3</b>
<b>A. The Commission Should Allow Relocation to Alternate Sites Beyond a Two-Kilometer Radius When Such Relocation Will Increase Overall System Efficiency and Preserve the Value of Auctionable Spectrum.</b>	<b>5</b>
<b>B. An Exemption From the Two-Kilometer Restriction Is Warranted Provided That It Would Improve Signal Density and Continuity of Service for Grandfathered Multilateration LMS Operations.</b>	<b>6</b>
<b>C. Reconsideration of the Two-Kilometer Rule Is Warranted Because Grandfathered Multilateration LMS Operations Are Distinguishable From Site-Based CMRS Operations.</b>	<b>8</b>
<b>D. Reconsideration of the Two-Kilometer Site Relocation Rule Is Necessary To Enable Grandfathered Multilateration LMS Licensees To "Fill-In" Their Existing Service Areas.</b>	<b>9</b>
<b>III. THE COMMISSION MUST CLARIFY THE "SAFE HARBOR" RULE TO PROVIDE THAT ONLY PART 15 OPERATIONS AUTHORIZED PURSUANT TO THE PART 15 RULES EFFECTIVE UPON ENACTMENT OF THE SAFE HARBOR RULE BENEFIT FROM A PRESUMPTION OF NON-INTERFERENCE.</b>	<b>11</b>
<b>IV. CONCLUSION</b>	<b>12</b>
<b>Attachment A - Map of Teletrac Grandfathered Multilateration LMS Systems</b>	

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 90 of the	)	PR Docket No. 93-61
Commission's Rules To Adopt	)	
Regulations for Automatic Vehicle	)	
Monitoring Systems	)	
	)	

To: The Commission

**PETITION FOR RECONSIDERATION**

Teletrac License, Inc. ("Teletrac"), by its attorneys, hereby submits its petition for reconsideration of the two-kilometer site relocation rule governing multilateration location and monitoring service ("LMS") adopted in the *LMS Reconsideration Order*.<sup>1/</sup> In addition, Teletrac seeks limited clarification of the "safe harbor" rule applicable to Part 15 operations.

**I. INTRODUCTION**

Teletrac is one of the nation's leading providers of location information and associated monitoring services to consumers, businesses and law enforcement agencies and holds multilateration LMS licenses<sup>2/</sup> to provide service in 26 cities nationwide. Teletrac is

---

<sup>1/</sup> See *Amendment of Part 90 of the Commission's Rules To Adopt Regulations for Automatic Vehicle Monitoring Systems*, Order on Reconsideration, PR Docket No. 93-61, FCC 96-115, at ¶¶ 37-39 (released March 21, 1996) ("*LMS Reconsideration Order*").

<sup>2/</sup> "Multilateration" LMS, which is the type of location and monitoring service operated by the Teletrac, employs spread-spectrum technology to locate vehicles and other objects with accuracy throughout a wide geographic area. Multilateration systems locate mobile units associated with the object being tracked by comparing signals received from the mobile unit at a number of fixed points. "Non-multilateration" systems use narrowband technology and low-power, unlicensed devices to transmit data to and from vehicles passing through a particular location. Non-multilateration technology is used, for example, in

currently operating systems in Los Angeles, Chicago, Detroit, Houston, Dallas and Miami, covering a total population of 38 million. In the six cities where Teletrac's system is already operational, it has deployed over 35,000 commercial units and 49,000 total units in service. In addition, Teletrac is in the process of building out systems pursuant to the Commission's September 1, 1996, construction deadline under authority of grandfathered LMS licenses that it holds in Atlanta, Boston, Buffalo, Cincinnati, Cleveland, Columbus, Indianapolis, Milwaukee, Minneapolis, New York, Orlando, Philadelphia, Phoenix, Pittsburgh, St. Louis, San Diego, San Francisco, Seattle, Stamford and Washington, D.C.<sup>3/</sup> See Map of Teletrac Grandfathered Multilateration LMS Systems, Attachment A.

Teletrac has developed a proprietary system that utilizes multilateration-based techniques accurately and effectively to determine the location of vehicles on a real-time basis. Multilateration-based techniques use terrestrial receivers to determine position,

---

automated toll collection systems.

<sup>3/</sup> In the 1995 *LMS Order*, the Commission replaced the interim rules governing automatic vehicle monitoring service ("AVM") with permanent rules and renamed the service the location and monitoring service ("LMS"). See *Amendment of Part 90 of the Commission's Rules To Adopt Regulations for Automatic Vehicle Monitoring Systems*, Report and Order, PR Docket No. 93-61, 10 FCC Rcd 4695 (1995) ("*LMS Order*"), *recon.*, FCC 96-115 (released March 21, 1996) ("*LMS Reconsideration Order*"). The Commission created a new band plan for existing ("grandfathered") AVM licensees and future multilateration and non-multilateration LMS systems. First, the Commission provided for the "grandfathering" of base station authorizations of multilateration AVM systems that were in operation or authorized as of February 3, 1995 — the date of adoption of the new LMS regime in the *LMS Order* — subject to certain conditions. 10 FCC Rcd at 4728-9. These conditions include modification of the constructed base stations to conform to the new band plan by April 1, 1998, and the completion of construction of any unbuilt base stations by a date since extended to September 1, 1996, by the *LMS Reconsideration Order*. The Commission also provided for the future auction of multilateration LMS licenses based on geographic markets. 10 FCC Rcd at 4725-4727.



thereby avoiding "line-of-sight" problems that limit the effectiveness of satellite-based and other location technologies, especially in high-density and structurally congested urban environments. Leading law enforcement and public safety agencies such as the Los Angeles County Sheriff's Department use Teletrac's system. In addition, Teletrac's current customers include Southern California Edison, TCI Cable, Pacific Bell, Detroit Public School Transportation and the Chicago Yellow Cab Company.

The overall market for automobile theft prevention devices is growing rapidly, and Teletrac's system has a proven ability to meet that demand. Over 1.5 million thefts of motor vehicles occurred in the United States during 1994, and these offenses comprised 13 percent of all property crimes. Teletrac's system has proven to be critical in automobile safety and theft prevention. In 1995, Teletrac-equipped vehicles were recovered 70 percent of the time within one hour of actually being stolen, with an overall recovery rate exceeding 90 percent.

**II. THE COMMISSION SHOULD RECONSIDER THE TWO-KILOMETER RULE TO PERMIT THE EFFICIENT DEVELOPMENT OF GRANDFATHERED LMS OPERATIONS.**

In the *LMS Order*, the Commission stated that when modifying a base station to conform with the new band plan, a grandfathered multilateration LMS licensee may relocate to an alternate site that is no more than two kilometers from the site specified in the original license. See 10 FCC Rcd at 4729. The Commission reaffirmed this two-kilometer rule in the *LMS Reconsideration Order*, at ¶ 39. However, in preparing to build out its system, Teletrac has identified two situations that necessitate reconsideration of this two-kilometer rule.

First, site surveys have revealed that some originally licensed sites are unavailable due to congestion of other licensee antennas collocated at the originally licensed site. In some cases, overcrowding of radio operations also rules out relocation of such sites within that specified two-kilometer radius. Teletrac has, however, identified suitable alternate sites located more than two-kilometers from its originally licensed sites. These alternate sites would increase the efficiency of Teletrac's system while still preserving the underlying goal of the two-kilometer rule of preventing grandfathered LMS licensee operations from invading future auctionable spectrum space.

Second, Teletrac has identified a pressing need to move some of its initial sites beyond a two-kilometer radius in order to improve signal density and continuity of service. Improving signal density and continuity of service will enhance the ability of law enforcement and public safety officials employing Teletrac's locating and tracking system to conduct seamless surveillance tactics to pursue stolen vehicles in congested urban settings. In neither of these instances would site relocation reduce the amount of unserved area available for future auction. Although the Commission understandably seeks to avoid encroachment by grandfathered operations into geographic areas where they are not presently authorized, there is no policy reason to hamper the effectiveness of authorized systems within the areas they cover. Accordingly, Teletrac believes that reconsideration of the two-kilometer rule is warranted in these two limited circumstances.

**A. The Commission Should Allow Relocation to Alternate Sites Beyond a Two-Kilometer Radius When Such Relocation Will Increase Overall System Efficiency and Preserve the Value of Auctionable Spectrum.**

Reconsidering the two-kilometer site relocation rule to allow grandfathered multilateration LMS licensees to move more than two kilometers from an originally licensed site due to site unavailability is in the public interest. This is particularly the case when the anticipated site relocations have been optimized to increase the overall efficiency of the system and to fulfill the two-kilometer rule's purpose of preserving the value of auctionable LMS spectrum.

The Commission's underlying purpose in adopting the two-kilometer site relocation rule is to distinguish a modification of an existing station from a proposal to apply for a new site that would generally be subject to competitive bidding. According to the Commission,

if a licensee seeks to expand its service area by using a transmitter on the same channel as its existing station but more than 2 kilometers from its present transmitter site, we believe that it should be subject to an auction with other initial or expansion applications. We view such proposals to be new ventures which generally would be subject to competitive forces.<sup>4/</sup>

The main purpose of the two-kilometer rule, therefore, is to preserve auctionable spectrum for the Commission's competitive bidding processes by limiting any expansion of grandfathered spectrum.

---

<sup>4/</sup> *Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services*, Report and Order, 9 FCC Rcd 6513, 6536 (1994) ("*Part 22 Rewrite*"); *see also Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services*, Third Report and Order, 9 FCC Rcd 7988, 8145-6 (1994) ("*CMRS Third Report and Order*").

Reconsideration allowing Teletrac to relocate to alternate sites outside the two kilometer radius of its originally licensed sites would promote this objective where, as Teletrac proposes, the alternate siting will increase system efficiency and is optimized to preserve the value of auctionable spectrum. Teletrac has identified suitable alternate sites that, while outside the two-kilometer range of its originally licensed site, nonetheless would *reduce* the service area contour of its collective transmitter sites in a particular market. In these circumstances, an exception to the two-kilometer restriction would be warranted even if Teletrac were able to make (less efficient) use of its initially allocated sites. But where, because of congestion, it is impossible to use those initially allocated sites — or any sites within two kilometers — at all, an exception is necessary to allow Teletrac to make any use of the spectrum that has been allocated.

**B. An Exemption From the Two-Kilometer Restriction Is Warranted Provided That It Would Improve Signal Density and Continuity of Service for Grandfathered Multilateration LMS Operations.**

Exempting grandfathered multilateration LMS licensees from the two-kilometer rule is warranted when it would advance important public interest goals of improving signal density and continuity of service.<sup>5/</sup> Improving signal density and continuity of service is critical if Teletrac's grandfathered multilateration LMS system is to maximize its effectiveness in

---

<sup>5/</sup> The relief sought by Teletrac also will advance important public safety and law enforcement operations. As Congress has stated,

The Commission should be ever vigilant to promote the private land mobile spectrum needs of police departments and other public agencies which need to use such radio services to fulfill adequately their obligations to protect the American public.

combating auto theft, facilitating recovery of stolen vehicles and assisting law enforcement officers to pinpoint contraband and drug shipments in surveillance operations. A seamless and highly accurate location and monitoring wireless web is required for such purposes. Absent reconsideration of the two-kilometer site relocation rule, however, Teletrac will be unable to improve signal density and continuity of service in order to maximize the ability of law enforcement officials to track stolen vehicles and other monitored contraband in "urban canyons" and "spectrum gaps."

In addition, as the Commission observed in the *LMS Order* with regard to the anticipated future auction of multilateration LMS spectrum, there is a compelling "need for prospective bidders to be able to evaluate the likely value of the spectrum upon which they will be bidding." 10 FCC Rcd at 4729. Undoubtedly, one of the primary indices upon which prospective bidders will rely in placing a value on the future LMS markets to be auctioned is the real-world experience of Teletrac as the only grandfathered multilateration LMS licensee with a constructed and operational system. If the exigencies of the two-kilometer site relocation rule are allowed to stymie the successful build out of Teletrac's grandfathered multilateration LMS system, the value of that system as a test bed providing real-world market information to prospective bidders at the LMS auction would be sorely diminished.

**C. Reconsideration of the Two-Kilometer Rule Is Warranted Because Grandfathered Multilateration LMS Operations Are Distinguishable from Site-Based CMRS Operations.**

The Commission must reconsider its conclusion in the *LMS Reconsideration Order* that the same two-kilometer benchmark that applies to site changes for 931 MHz CMRS paging operations also should apply to grandfathered multilateration LMS operations.<sup>6/</sup> There are several distinctions between grandfathered multilateration LMS operations and 931 MHz CMRS paging operations that make strict adherence to the same benchmark unjustified for grandfathered multilateration LMS licensees.

First, grandfathered multilateration LMS operations are a new service that are currently transitioning out of the experimental AVM phase and an interim rule regime to build-out under the Commission's grandfathering scheme. In contrast, 931 MHz CMRS paging operations were already well-established and fully operational when the Commission determined to go to market-based auction licensing and applied a two-kilometer benchmark to it.<sup>7/</sup> Unforeseeable exigencies associated with grandfathered LMS operations at the present build-out phase therefore are quite distinct from 931 MHz CMRS paging.

Second, 931 MHz CMRS paging licensees may add a fill-in transmitter (*i.e.* the service area and interference contour of the additional transmitter are totally encompassed by the composite service area contour and predicted interference contour, respectively, of an existing station on the same channel) without applying for permission or notifying the

---

<sup>6/</sup> See *LMS Reconsideration Order*, at ¶ 39 (citing *CMRS Third Report and Order*, 9 FCC Rcd at 8415 ¶ 356).

<sup>7/</sup> See *Part 22 Rewrite*, 9 FCC Rcd at 6536 ¶ 105.

Commission of operation.<sup>8/</sup> Comparable fill-in transmitter and service area contour concepts do not apply to grandfathered multilateration LMS licensees to enable them to achieve improved signal density and continuity of service. Thus, application of the same two-kilometer benchmark works a greater hardship on grandfathered multilateration LMS licensees than on 931 MHz CMRS paging licensees. Accordingly, the Commission's conclusion in the *LMS Reconsideration Order* that the same two-kilometer benchmark should apply to 931 MHz CMRS paging licensees and grandfathered multilateration LMS licensees was in error, and must be reconsidered consistent with Teletrac's foregoing proposals.

**D. Reconsideration of the Two-Kilometer Site Relocation Rule Is Necessary To Enable Grandfathered Multilateration LMS Licensees To "Fill-In" Their Existing Service Areas.**

The Commission should reconsider the two-kilometer site relocation rule to allow grandfathered multilateration LMS licensees to optimize their system operations by constructing "fill-in" transmitters to achieve maximum efficiency for location and tracking within their existing service contours. Allowing grandfathered multilateration LMS licensees to build fill-in transmitter sites within their composite service area contour will allow such licensees to maximize the efficiencies and coverage density of their systems.<sup>9/</sup>

---

<sup>8/</sup> See *CMRS Third Report and Order*, 9 FCC Rcd at 8151 ¶ 371.

<sup>9/</sup> Although the Commission has not defined a "service contour" or "composite service area contour" for grandfathered multilateration LMS licensees, these terms ultimately will have to be employed in coordinating between grandfathered multilateration LMS licensee operations and the market-based multilateration LMS operator licensed at auction. For purposes of this discussion, Teletrac employs the meanings of the terms "service contour" and "fill-in transmitters" as commonly understood and defined in the Commission's rules. A "service contour" means:

The locus of points surrounding a transmitter where the predicted median field

Currently, the two-kilometer site relocation rule would limit the ability of a grandfathered multilateration LMS licensee that holds multiple sites in an urban market to maximize the efficiency of its location and tracking service at points more than two kilometers away from its original sites, notwithstanding that these points would fall within the composite service area contour of the grandfathered multilateration LMS licensee's originally licensed sites. Strictly applying the two-kilometer site relocation rule to prohibit grandfathered multilateration LMS licensees from building fill-in transmitters that are more than two kilometers away from originally licensed sites would not serve any purpose when the fill-in transmitters are positioned within the composite service area contour of the grandfathered multilateration LMS licensee's originally licensed sites. It is highly unlikely that a successful multilateration LMS bidder licensed at auction otherwise would desire or be technically able to engineer location of a site within the interstices of the grandfathered multilateration LMS licensee's existing composite service area contour such that construction of a fill-in site by the grandfathered multilateration LMS licensee would materially diminish the value of usable spectrum available to the successful bidder at the LMS auction.

---

strength of the signal from the transmitter is the minimum field strength that is considered sufficient to provide reliable service to mobile stations.

*See* 47 C.F.R. § 22.99. The phrase "fill-in transmitters" means:

Transmitters added to a station, in the same area and transmitting on the same channel or channel block as previously authorized transmitters, that do not expand the existing service area, but are established for the purpose of improving reception in dead spots.

*See id.*



Finally, as indicated above in section II(C), site-based 931 MHz CMRS paging licensees are allowed to construct additional fill-in sites within their composite service area contour on a permissive basis. Assuming for the sake of argument that the Commission's conclusion in the *LMS Reconsideration Order* is correct that the same two-kilometer benchmark rule should apply to 931 MHz CMRS paging licensees and grandfathered multilateration LMS providers, therefore, grandfathered multilateration LMS licensees should be accorded the same flexibility to build additional fill-in sites within their composite service area contours that the Commission makes available to 931 MHz CMRS paging licensees. If the Commission otherwise decides to preserve the current licensing regime, it is at a minimum obligated to explain why the same two-kilometer benchmark should apply to grandfathered multilateration LMS licensees and 931 MHz CMRS paging licensees, while a different licensing standard should apply with regard to permissive fill-in authority.<sup>10/</sup>

**III. THE COMMISSION MUST CLARIFY THE "SAFE HARBOR" RULE TO PROVIDE THAT ONLY PART 15 OPERATIONS AUTHORIZED PURSUANT TO THE PART 15 RULES EFFECTIVE UPON ENACTMENT OF THE SAFE HARBOR RULE BENEFIT FROM A PRESUMPTION OF NON-INTERFERENCE.**

In the *LMS Reconsideration Order*, the Commission reaffirmed and clarified its "safe harbor" rule which establishes the conditions under which Part 15 devices operating in the spectrum band shared with multilateration LMS licensees are permitted to continue to operate.<sup>11/</sup> In essence, the safe harbor rule embodies a presumption that Part 15 devices will

---

<sup>10/</sup> See *United States Tel. Ass'n v. FCC*, 28 F.3d 1232, 1235 (D.C. Cir. 1994); *Melody Music, Inc. v. FCC*, 345 F.2d 730, 732 (D.C. Cir. 1965).

<sup>11/</sup> *LMS Reconsideration Order* at ¶ 20.

not cause interference to multilateration LMS licensees and may continue to operate, provided that they are operated pursuant to the Part 15 rules as they existed when the safe harbor rule was adopted.<sup>12/</sup> The *Spread Spectrum Notice* tentatively proposes to modify the parameters under which Part 15 spread spectrum frequency hopping devices operate. *See id.* at ¶¶ 30-34.

The presumption of non-interference in the safe harbor rule assumes that the Part 15 rules as they existed when the safe harbor rule was adopted will remain in place. Unless the Commission makes a specific determination regarding the effects of later modifications of Part 15 rules on interference with multilateration LMS operations, therefore, the Commission should not presume that Part 15 devices operating under rules modified subsequent to the adoption of the safe harbor rule — such as the modifications anticipated by the tentative proposals in the *Spread Spectrum Notice* — will not be likely to cause interference. Clarification of the safe harbor rule to anticipate the impact of future modifications to Part 15 rules thus will promote efficient LMS and Part 15 operations pursuant to the Commission's spectrum management goals. Thus, the Commission should modify the current rule to provide that only those Part 15 devices authorized under the rules now in effect may take advantage of the safe harbor.

#### IV. CONCLUSION

For the all of the foregoing reasons, Teletrac urges the Commission to grant its petition for reconsideration of the two-kilometer site relocation and the safe harbor rules. Grant of reconsideration is in the public interest because it will increase the overall efficiency

---

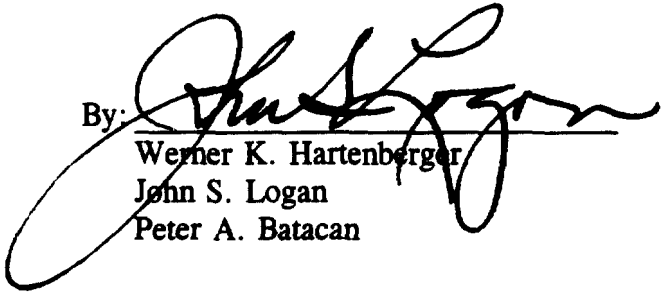
<sup>12/</sup> See 47 C.F.R. § 90.362; *LMS Reconsideration Order*, at ¶ 20.

of grandfathered multilateration LMS operations. In addition, reconsideration as proposed will enhance the ability of public safety and law enforcement officials to fight crime with state-of-the-art location and tracking surveillance techniques. Granting Teletrac flexibility under the two-kilometer site relocation standard also will improve the value of LMS spectrum for the Commission's anticipated future auction by enabling Teletrac to realize real-world success in the construction, operation and marketing of an advanced multilateration LMS system. Finally, clarification of the safe harbor rule will promote the Commission's goal of efficient spectrum management.

Respectfully submitted,

TELETRAC LICENSE, INC.

By:



Werner K. Hartenberger  
John S. Logan  
Peter A. Batacan

Its Attorneys

DOW, LOHNES & ALBERTSON  
A Professional Limited Liability Company  
1200 New Hampshire Avenue, N.W.  
Suite 800  
Washington, D.C. 20036-6802  
(202) 776-200

May 30, 1996

**ATTACHMENT A**

